UNITED STATES COURT OF APPEALS

For the Fifth Circuit

No. 20595

DWIGHT ARMSTRONG, ET AL,

APPELLANTS,

V.

THE BOARD OF EDUCATION OF THE CITY OF BIRMINGHAM, ET AL,

APPELLEES.

AFFIDAVIT OF THEO. R. WRIGHT

Affiant is Superintendent of Schools of the City of Birmingham, and I have held this position since July 1, 1959. Before that time I was Assistant Superintendent of Schools for many years.

Following the decision of United States District Judge Seybourn H. Lynne in this case rendered on May 28, 1963, approximately 75 forms for application for assignment or transfer under the Alabama Pupil Placement Law were obtained by Negroes at the various schools and also from the administrative offices of the Board of Education; all of which occurred within a period of approximately five days after this decision. After that period no requests were received. Only one such application has actually been filed with the Board, this being approximately 10 days ago. This application has not been as yet acted upon by the Superintendent or the Board.

I have read the so-called uncontroverted statement of facts in the brief filed in this case on behalf of appellants, in which the statement is made that "the school authorities have made no plans of any nature to alter the school system in conformity with the United States Constitution".

I do not regard that as an accurate statement of the situation. The Board has in fact since the enactment of the Alabama School Placement Law revised its rules, has prepared and made available forms for application for transfer and has otherwise been prepared to operate the schools on a racially nondiscriminatory basis, in accordance with the Alabama Placement Law. It was and is now prepared to deal with the matter in a proper and orderly manner upon applications pursuant to the laws of Alabama and the decree of the District Court in this case.

The one application above mentioned for assignment or transfer is the only application that has been filed by or in behalf of any Negro pupil under the Alabama Placement Law since July 1, 1959, when I became Superintendent of Schools, a period of approximately four years, and no application except the one above mentioned has been filed during the tenure of any member who now comprises the Birmingham Board of Education. In my judgment and opinion, the finding of Judge Lynne in the opinion, which I have read, that there is a very strong opposition on the part of both races to the mixing of the races in the schools, in effect that segregation in Birmingham is voluntary, is an accurate appraisal of the situation.

It is not true as argued by the appellants in their brief that the granting of the injunction which they seek would result in no injury to appellees.. Such an injury would in fact, if issued at this late date, substantially disrupt not only the organization and housing of the first grade pupils directly involved, but the entire school system of the City. The disrupting effect of such an order at this time cannot be calculated and the injury which it would create would be attended with

irreparable ramifications and consequences. It would not be as appellants argue merely a "minimal performance", but would be a maximum disruption.

In fact an attempted desegregation of all first grades in the system would involve a greater disproportionate impact upon the school system than the arithmetical proportion of students might indicate. The number of first graders will amount to approximately 10-1/2% of the total, but the effect of a complete reshuffling of this 10-1/2% on the space, teachers and other facilities available in the school system would be out of all proportion to the mere numbers involved.

Furthermore, the attempted desegregation of any one grade in the system at the commencement of the fall term this year would be greatly disruptive of the whole school system, and extremely impracticable and injurious, if not impossible, for the reasons stated herein and in other affidavit of affiant.

/s/ Theo. R. Wright
THEO. R. WRIGHT

STATE OF ALABAMA)
)
JEFFERSON COUNTY)

Before me, Ollie O'Brien Littlejohn, a Notary Public in and for said State and County, personally appeared the above named affiant, Theo. R. Wright, who being known to me and being first duly sworn deposes and says under oath that he has read the contents of the foregoing statement and that the facts therein are true.

/s/ Theo. R. Wright
AFFIANT

Sworn to and subscribed before me
this 25th day of June, 1963.

/s/ Ollie O'Brien Littlejohn
NOTARY PUBLIC

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

DWIGHT ARMSTRONG, ET AL,)
)
PLAINTIFFS,)
)
V.)
) CIVIL ACTION NO. 9678
THE BOARD OF EDUCATION OF)
THE CITY OF BIRMINGHAM,)
JEFFERSON COUNTY, ALABAMA,)
ET AL,)
)
DEFENDANTS.)

PLAN SUBMITTED BY THE BOARD OF EDUCATION OF THE CITY OF BIRMINGHAM PURSUANT TO ORDER DATED JULY 19, 1963.

WHEREAS, the Board has been directed by the order of the court dated July 19, 1963, to submit to the court a plan which shall "effectively provide for the carrying into effect not later than the beginning of the school year commencing September 1963, and thereafter of the Alabama Pupil Placement Law", etc. (which order contains a provision that nothing contained therein is intended to mean that voluntary segregation is unlawful; or that the same is not legally permissible); and

WHEREAS, as shown by affidavits of the Superintendent of Schools, Theo. R. Wright, submitted in opposition to the petition for an injunction pending appeal in the United States Court of Appeals for the Fifth Circuit, the contents of which affidavits are adopted by the Board and copies filed in this court herewith, there were a total of approximately 73,000 pupils enrolled in all of the Birmingham schools as of January 1963, and it is estimated that there will be 7,632 first grade pupils at the beginning of the next school year in September 1963; and

WHEREAS, according to the best estimate, there will be a total of 72,334 pupils in the school system at the commencement of the school year in September 1963, of which 37,500 will be White and 34,834 will be Negro, according to the estimate (51.8% White and 48.2% Negro), attending the 92 elementary schools and the 13 high schools comprising the Birmingham system; and

WHEREAS, of the estimated 7,632 first grade pupils at the commencement of the school year in September 1963, 3,729 will be White and 3,903 will be Negro, according to said estimate; and

WHEREAS, commencing with the school year September 1963, it is estimated that there will be a total of 3,542 pupils in the 12th grades, of which 2,167 will be White and 1,375 will be Negro, according to such estimate, and it is estimated that there will be 5,784 pupils in the eleventh grades of which 3,379 will be White and 2,405 will be Negro, according to said estimate; and

WHEREAS, it is estimated that the lower down the scale of grades in number, the more pupils will be enrolled, for each grade in inverse order; and

WHEREAS, since the final judgment in the above styled case rendered in this court on May 28, 1963, applications have been filed and made to the Board in behalf of certain Negro students for assignment or transfer from the school to which they had already been assigned for the ensuing year, to another school, which are now pending and in process; and

WHEREAS, at the time of the submission of this plan to the court only sixteen (16) days remain until the opening

of the school year on September 4, 1963, and thus it will be impossible to give adequate consideration to any large number of new applications for assignment or transfer that might be filed in the interval prior to the opening of the school year; and

WHEREAS, in the judgment of the Board it is not practicable, on account of the short space of time remaining, to consider individual applications in behalf of Negro pupils for assignment or transfer to schools which have been attended only by pupils of the White race except applications pertaining to one grade only, for the school year commencing September 4, 1963; and

WHEREAS, it is the judgment of the Board of Education that it is for the best interests of the pupils of all grades and the orderly and efficient operation of the Birmingham school system that the 12th grades be selected as the grade for the processing of such transfers for the school year 1963, and that applications pertaining to other grades cannot as a practical matter be put into effect for the year commencing in September 1963.

The Board, therefore, proposes the following plan, pursuant to the said order of the court:

1. All applications for transfer (to a school heretofore attended only by pupils of a race other than the race of the pupils in whose behalf the applications are filed) that are now on hand, filed prior to the submission of this plan, are in process and will be duly considered pursuant to and in accordance with the Alabama Placement Law and the

regulations of the Board thereunder and decision made without discrimination on the grounds of race or color for the school year commencing in September 1963.

2. All applications filed in accordance with existing regulations of the Board on or before August 26, 1963, for assignment or transfer for the 12th grade, to a school heretofore attended only by pupils of a race other than the race of the pupils in whose behalf the applications are filed, will be processed and determined by the Board pursuant to its regulations as far as is practicable, so that a decision may be made for either approval or rejection of such applications for the term commencing in September 1963, without discrimination as to race or color. Applications for assignment or transfer, pertaining to admission into grades other than the 12th grade, filed after the submission of this plan will be processed in accordance with the applicable law and regulations in due course, but the Board cannot undertake and need not be required to process such applications for admission or transfer for the school year commencing September 4, 1963, and under this plan the Board will be required to process such applications only for admission or transfer for the school year commencing in September 1964, and only involving a limited number of grades, one or more (according to future determinations), for that school year. All applications for all grades shall be made effective when this plan shall become applicable and effective as to any such grades, without discrimination on the grounds of race or color.

3. Subject to the provisions of paragraphs 1 and 2 above, all pupils in all schools of the Birmingham system will

remain assigned to schools to which they are now assigned for the school year commencing September 1963, and for such year all new assignements required will be made initially by the Superintendent in accordance with the custom and practice for assignment of pupils that has prevailed in the school system prior to the entry of the judgment of the court in this case on May 28, 1963, such method of assignment being necessary in order to prevent a disruption of the school system for the ensuing term and to maintain an orderly administration of the schools in the interests of all pupils.

The foregoing plan is submitted on behalf of the Board of Education of the City of Birmingham in compliance with the order of this court dated July 19, 1963.

Jos. F. Johnston

JOSEPH F. JOHNSTON

Reid B. Barnes

REID B. BARNES

Attorneys for the Defendant, the Board of Education of the City of Birmingham, Alabama.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

DWIGHT ARMSTRONG, et al,)

Plaintiffs,)

vs.)

BOARD OF EDUCATION OF THE CITY OF BIRMINGHAM, et al,)

Defendants,)

CHARLES L. SMITH and wife, VIRGINIA L. SMITH; LAYLE SAMFORD and wife, PERNIE M. SAMFORD; and WALTER O. MONTEITH and wife, EVELYN R. MONTEITH,)

Intervenors.)

CIVIL ACTION

NO. 9678

Filed Sept 4 1963
William E Davis, Clerk
U. S. District Court
Northern District of Alabama

NOTICE OF APPEAL

Come the above named intervenors and hereby give notice of an appeal by said intervenors from an order of said United States District Court denying the petition of said intervenors for an intervention and for a suspension or stay of said plan of intervention prayed therein.

Dated this 4th day of September, 1963.

MEAD, NORMAN AND FITZPATRICK,

By: [signature]
Of Counsel for Said Intervenors

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 4th day of September, 1963, served a copy of the foregoing Notice of Appeal on W. L. Williams, Jr., one of the attorneys of record for the plaintiffs, 1630 4th Avenue, North, Birmingham, Alabama, and on Reid B. Barnes, Exchange-Security Building, Birmingham, Alabama, Attorney for Defendants, by depositing two copies thereof in the United States Mail, postage prepaid, in envelopes addressed respectively to each of said attorneys at their respective addresses as set out in the foregoing certificate, which addresses are the last addresses of said attorneys known to me.

[signature]
An attorney for said intervenors

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

DWIGHT ARMSTRONG, ET AL,

PLAINTIFFS,

V.

THE BOARD OF EDUCATION OF THE CITY OF BIRMINGHAM, JEFFERSON COUNTY, ALABAMA, ET AL,

DEFENDANTS.

CIVIL ACTION NO. 9678

ORDER APPROVING PLAN

There has been submitted to the court by the Board of Education of the City of Birmingham, a plan pursuant to order of the court dated July 19, 1963 (which order was made by this court under the direction of previous order of the United States Court of Appeals for the Fifth Circuit). Such plan has been studied by me as a judge of the United States District Court, Northern District of Alabama, in the absence of United States District Judge Seybourn H. Lynne, who is now away from the City of Birmingham and will not return until after August 19 (the final date for the submission of said plan), and after study and consideration thereof, and of the order entered July 19, 1963, it is determined that the plan should be approved.

It is, therefore, ORDERED, ADJUDGED and DECREED that the said plan submitted by said defendant board be and is approved, that the plan be filed with the Clerk, and that the Clerk send copies to all of the attorneys who have filed appearances in this action, other than the attorneys for the Board itself.

Objections may be filed thereto, to be heard by Judge Seybourn H. Lynne upon his return.

DONE and ORDERED this 19th day of August, 1963.

United States District Judge

STATE OF ALABAMA)
)
JEFFERSON COUNTY)

Before me, the undersigned authority, in and for said County, in said State, personally appeared Colonel Albert J. Lingo, Director of the Alabama Department of Public Safety, who, being made known to me and being by me first duly sworn, deposes on oath and says:

That several weeks ago the Governor of the State of Alabama directed that I personally and through my organization make an investigation in the City of Birmingham and environs to determine whether the integration of the public schools of the City of Birmingham pursuant to a plan of integration approved by the Federal Court could be made peaceably and without undue public disturbances. In obedience to that command, I dispatched five investigators attached to the Department of Public Safety to Birmingham to make inquiries as to the possibility of peaceable integration and the result of this investigation is as stated in an affidavit this day prepared by these investigators which I have read and approve.

In addition to this, I have personally made an investigation and it is my opinion that the situation in Birmingham is extremely explosive and that there is good reason to believe that rioting, civil disruption, violence and injury to persons and property is imminent and that while law enforcement agencies can discourage, limit and punish such unlawful acts they cannot be entirely eliminated. I have received numerous telephone calls and threats that there will be continued violence, that they will increase and that attempts will be made to commit homicide. It is my opinion, based upon my experience, that these threats are in some measure authentic. I am further of the opinion that rather than decrease in the immediate future, such unlawful acts will continue and increase. It is further my opinion that the immediate cessation and postponement of the plan of integration presently being attempted would result in a pacification of the community, the elimination of threats to life and property and would allow a cooling off period and aid the attempts of law enforcement and other agencies to produce a relative period

of calm and quiet. And it is my opinion that this condition would be beneficial not only to the community at large, but to the peaceful operation of the public school system and the conduct of public education.

/S/ Col. Albert J. Lingo

Colonel Albert J. Lingo

Sworn to and subscribed before me,

this 4th day of September, 1963.

Hazel Hitchcock

Notary Public.

STATE OF ALABAMA

JEFFERSON COUNTY

Before me, the undersigned authority, in and for said County, in said State, personally appeared Captain Ben L. Allen, Lt. Ralph Holmes, Lt. Ramon Brooks, Sgt. Harry Sims, and Investigator W. R. Posey, who, being made known to me, and who being by me first duly sworn, depose on oath and say:

That they are duly appointed officers of the Alabama Department of the Office of Public Safety whose authority is prescribed by Act No. 585 of the General Acts of Alabama, 1953, approved September 11, 1953, and that on the evening of August 28, 1963, they were instructed by their superior Major W. R. Jones, Commander of the Investigative and Identification Division of said Department, to make a survey of circumstances in connection with the peaceable integration of the public schools of the City of Birmingham, pursuant to a plan of integration approved by the United States District Court for the Northern District of Alabama, Southern Division, the same to be put into operation and effect on September 4, 1963, for the purpose of ascertaining whether the integration of said schools in accordance with said plan could possibly or likely be accomplished peaceably or would be attended with breaches of the peace, violence, civil disruption and injury to persons or property.

The affiants personally conducted this investigation beginning on the morning of Thursday, August 29, 1963, and continuing through Saturday, August 31, 1963.

This investigation consisted principally of going into the communities surrounding the public schools of the City of Birmingham and particularly West End High School, Ramsey High School and Graymont Elementary School, after it became known that these schools were to be first integrated, interrogating residents of these communities for the purpose of ascertaining the sentiment of the inhabitants thereof and to discover whether there was an expectation of violence and civil disruption connected with the operation of the plan of integration of the same schools and to ascertain whether the general atmosphere of the communities was such as that they, as trained law enforcement officers, could detect, ascertain and draw a conclusion from their experience that the said schools could be integrated peaceably or whether there would probably or likely be civil disruption and violence attendant upon such integration attempts accompanied by injuries to persons or property.

Approximately two hundred seventy-five individuals were interviewed, which included citizens and householders in the community, parents of children expecting to attend the named schools, business and professional people and others.

Based upon this investigation, and based upon the affiants' knowledge and experience in criminal investigations, they are of the opinion that continued attempts at the integration of the named public schools of the City of Birmingham in accordance with the plan approved by said Court will presently and in the immediate future probably and likely result in violence, civil insurrection and sabotage, attendant with danger to life and property and with probably injury to persons and the destruction of property; that in their opinion this condition will not be alleviated by the continued operation of the plan but will tend to increase in the immediate future.

/s/ BEN L. ALLEN
Captain Ben L. Allen

/s/ Ralph H. Holmes
Lt. Ralph Holmes

/s/ Ramon C. Brooks
Lt. Ramon Brooks

/s/ Harry Sims
Sgt. Harry Sims

/s/ W. R. Posey
Investigator W. R. Posey

Sworn to and subscribed before me,

this the 4th day of September, 1963.

/s/ Hazel Hitchcock
Notary Public.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

DWIGHT ARMSTRONG, et al,

Plaintiffs,

VS.

BOARD OF EDUCATION OF THE CITY OF BIRMINGHAM, et al,

Defendants.

CHARLES L. SMITH and wife, VIRGINIA L. SMITH; LAYLE SAMFORD and wife, PERNIE M. SAMFORD; and WALTER O. MONTEITH and wife, EVELYN R. MONTEITH,

Intervenors.

CIVIL ACTION

NO. 9678

FILED IN CLERK'S OFFICE
Northern District of Alabama

PETITION FOR INTERVENTION AND STAY OF THE OPERATION OF THE PLAN OF INTEGRATION APPROVED ON AUGUST 19, 1963.

I.

Come now Charles L. Smith and wife, Virginia L. Smith, 1604 18th Place, S.W., Birmingham, Alabama, whose children, Larry Smith and David Smith, are pupils at West End High School, Birmingham, Alabama; Layle Samford and wife, Pernie M. Samford, 1210 14th Avenue, South, Birmingham, Alabama, whose child, Phyllis Jane Morris, is a pupil at Ramsey High School, Birmingham, Alabama; and Walter O. Monteith and wife, Evelyn R. Monteith, 903 4th Street, West, Birmingham, Alabama, whose children, Annette Monteith, James Malcolm Monteith, and Susan Monteith, are pupils in the eighth, fourth and second grades, respectively, in Graymont Elementary School, Birmingham, Alabama, and as basis for the relief hereinafter prayed, show unto the Court as follows:

II.

That they are residents of the City of Birmingham, Jefferson County, Alabama, and that their children hereinbeto named in paragraph I hereof are pupils in the Birmingham Public School System in the schools as set forth in paragraph I hereof, which schools are those designated to be integrated under the plan of integration approved herein on August 19, 1963; that petitioners as parents of pupils in the schools affected by the plan of integration have a vital interest in these proceedings; that the welfare, safety, and educational development of their children and of the children of others similarly situated is at stake in the proceedings and that such interests are not being adequately represented herein.

III.

That the plan of integration approved herein has been partially put into effect this date and the remainder thereof, so petitioners are informed and believe and hence aver, will shortly be put into effect.

IV.

That the integration of Graymont School this date has been accomplished only by means of display of armed force and massive congregation of armed city and county law enforcement officers at said school, and that integration of Ramsey and West End High Schools, so petitioners are informed and believe and hence aver, will be accomplished in the same manner; that said atmosphere is not conducive to educational processes and poses a serious threat to the safety and welfare of petitioners' children and the children of others similarly situated.

V.

That thus far the accomplishment of the integration plan approved herein has been accompanied by demonstrations, riots, threatened bombings, and an atmosphere of tension and incipient violence which makes it plain that the children of petitioners and of those similarly situated will be subjected to grave risk of physical harm in their attendance at their schools, should said plan of integration approved herein be permitted to be continued in operation at this time; that investigations have been made in the communities surrounding the schools involved in the integration plan and petitioners are informed and believe and hence aver that the results of such investigations show that the present state of sentiment pervading these communities discloses that if the plan of integration be continued to be

implemented at this time, such action will probably or likely result in actual violence accompanied with personal injury to the children of petitioners and of those similarly situated and by destruction and injury to property belonging to them. Petitioners hereto attach affidavits showing to the Court the existence of the conditions found to prevail.

VI.

Petitioners show unto the Court that it is impossible to effectively continue the educational process in the atmosphere of tension and of impending violence and riots found to exist by the investigation referred to; and further that in such atmosphere the purpose of the plan is aborted and made ineffectual and the safety and very lives of the children of petitioners and of those similarly situated are placed in jeopardy.

VII.

Petitioners show unto the Court that the defendant Board of Education of the City of Birmingham is well aware of the existence of such condition but pursuant to the orders and mandates of this Court is under compulsion to proceed with the plan of integration approved by this Court regardless of the consequences and contemplates making no steps to further protect the interest of these petitioners and their children, and the interest of those similarly situated, but instead under the compulsion of the orders and decrees of this Court said Board of Education has proceeded to and intends to continue to proceed to implement said plan of integration which will result in irreparable harm to the physical, mental and psychological well-being of petitioners' children and to the children of those similarly situated.

VIII.

The actions of defendant Board of Education in carrying out the plan of integration approved and ordered to be put into effect by this Court will result in the physical presence of a relatively few negroes in the public schools of the City of Birmingham at the price of totally disrupting and effectively destroying the educational process in those schools and at the price of subjecting petitioners' children, and the children of those similarly situated, to the unreasonable risk of physical injury and harm; that the continuance of such plan at this time constitutes an abridgement of the civil rights of petitioners and of their children and of those similarly situated, depriving them of the equal protection of the laws and constitutes the deprivation of their rights, liberty and property without due process of law.

WHEREFORE, petitioners pray that they be allowed to intervene herein so as to adequately protect their interests and the interests of their children and the interests of those situated similarly to them, and they further pray that the operation of the plan of integration approved herein be immediately suspended for an indefinite period of time, so as to permit further study of the situation, and to allow a period of cooling off so that the safety of petitioners' children and property may be preserved, and petitioners pray for such other further, general or special relief as they may be entitled to in the premises.

MEAD, NORMAN & FITZPATRICK
OF COUNSEL
1734 The 2121 Bldg.
Birmingham, 3, Alabama

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 4th day of September, 1963, served a copy of the foregoing Petition for Intervention and Stay of Operation of the Plan of Integration Approved on August 19, 1963, on W. L. Williams, Jr., one of the attorneys of record for the plaintiffs, 1630 4th Avenue, North, Birmingham, Alabama, and on Reid B. Barnes, Exchange-Security Building, Birmingham, Alabama, attorney for Defendants, by depositing, two copies thereof in the United States Mail, postage prepaid, in envelopes addressed respectively to each of said attorneys at their respective addresses as set out in the foregoing petition which addresses are the last addresses of said attorneys known to me.

An Attorney for Petitioners.

MLW:ec

September 5, 1963

Honorable Burke Marshall
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington 25, D.C.

Attention: Hon. Harold H. Greene
Chief, Appeals and Research Section

Re: Armstrong v. Board of Education
C.A. No. 9678
Your ref: EM:ILB:bg

Dear Sir:

As requested in your letter of August 30, 1963, we are enclosing copies of pleadings filed in the above case since July 1963.

Yours very truly,

MACON L. WEAVER
United States Attorney

Encl.

DEPARTMENT OF JUSTICE

CIVIL RIGHTS DIVISION

Enforcement of Court Desegregation Orders

ALABAMA SECONDARY SCHOOLS - FALL 1963

Selected Papers

BACKGROUND: ORDERS IN PRIVATE SUITS

Birdie May Davis v. Board of School Commissioners of Mobile

Opinions of the Fifth Circuit; United States Supreme Court

(As dictated to Mrs. Gow by Mr. Churchill 9/9/63 - after 3:30 pm)

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA

BERTIE MAY DAVIS, et al Plaintiffs	)	
v.	)	CIVIL ACTION NO. 3003-63
MOBILE COUNTY, et al., Defendants	)	

Upon the annexed motion and affidavit for plaintiffs and after hearing counsel for plaintiffs and it appearing to the court that the order of the court issued August 23, 1963, requiring desegregation of the public schools of Mobile County, Alabama, beginning with 1963-64 school year is prevented from being carried out by the action of the Honorable George C. Wallace, Governor of the State of Alabama, now, therefore, it is

ORDERED, ADJUDGED, and DECREED:

(1) That the Honorable George C. Wallace, as Governor of the State of Alabama, his agents, servants, employees and those acting in concert with them, who may receive notice of this order, be and they hereby are, restrained until further order of this court from interfering with the desegregation of Murphy High School, or in any other way interfering with the desegregation of

the public schools of Mobile County, pursuant to the order of this court of August 23d, 1963;

(2) This order is granted upon condition that a bond be filed by the plaintiffs herein in the sum of $1,000, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained, said bond to be approved by the Clerk of this court;

(3) The United States Marshal is directed to serve a copy of this order on the Honorable George C. Wallace, Governor of the State of Alabama, and all defendants forthwith.

Dated this the 9th day of September 1963.

12:20 p.m.

/s/ Daniel H. Thomas
United States District Judge

(As dictated to Mrs. Gow by one of the secretaries in the United States Attorney's office, Mobile, Alabama, 9/9/63)

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA

BERTIE MAY DAVIS, Et al., Plaintiffs v. MOBILE COUNTY, et al., Defendants	CIVIL ACTION NO. 3003-63

ORDER TO SHOW CAUSE

Upon the annexed motion and affidavit of Vernon Z. Crawford and Clarence E. Moses, attorneys for the plaintiffs, it is

ORDERED that George C. Wallace, as Governor of Alabama, show cause in the United States Courthouse, Mobile, Alabama, in Room 229 on the 16th of September, 1963, at 3 o'clock in the afternoon, or as soon thereafter as counsel can be heard, why an order should not be made herein adding the said George C. Wallace as a party defendant and enjoining him from obstructing or preventing compliance with the order of this court requiring racial desegregation of the public schools in Mobile County, Alabama to commence in September 1963.

IT IS FURTHER ORDERED that a copy of this order and of the papers upon which the same is granted be served by the United States Marshal on George C. Wallace forthwith.

Dated this the 9th day of September 1963.

/s/ Daniel H. Thomas
United States District Judge

Filed September 9, 1963, 12:24 p.m.

/s/ William J. O'Connor
Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

BIRDIE MAE DAVIS, et al.

Plaintiffs,

vs.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, et al.

Defendants.

CIVIL ACTION

NO. 3003-63

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION AND SETTING CASE FOR TRIAL

This cause having been taken under submission on April 25, 1963, on motion for preliminary injunction, with leave given to file briefs; and the court having considered the affidavits filed pursuant to order of court of April 12, 1963, and the briefs filed herein, and having this day filed its findings of fact with opinion, it is now

ORDERED, ADJUDGED and DECREED that:

1. The motion for preliminary injunction is denied.

2. This case is set for trial at 9:30 a.m., on November 14, 1963. Consideration of the defendants' motion to dismiss is reserved until trial of the cause. Defendants shall have twenty days from the date of this order within which to file an answer.

3. Defendants are directed to present at the trial, as a part of their evidence after the completion of plaintiffs' case, a specific plan for the operation of the schools under their authority and control on a racially non-discriminatory basis, consistent with the principles established by the Supreme Court, to commence not later than the beginning of the 1964-65 school year.

Done this the 24th day of June 1963.

Daniel H. Thomas
District Judge

U. S. DISTRICT COURT
SOU. DIST. ALA.
FILED AND ENTERED THIS THE
24 DAY OF June,
19 63, MINUTE ENTRY
NO. 15217
WILLIAM J. O'CONNOR, CLERK

B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

BIRDIE MAE DAVIS, et al.	)	
Plaintiffs,	)	CIVIL ACTION
vs.	)	NO. 3003-63
BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, et al.	)	JUDGMENT AND ORDER UNDER MANDATE DATED JULY 9, 1963.
Defendants.	)	

The following judgment and order is entered by direction of mandate dated July 9, 1963, from the United States Court of Appeals for the Fifth Circuit, on plaintiffs' motion for injunction requiring the Mobile County Schools to commence integration not later than September 1963:

"The Defendant, Board of School Commissioners of Mobile County and the other individual Defendants (Charles E. McNeil, President; William B. Crane, Jack C. Gallalee, Arthur Smith, Jr., and Kenneth Reed, Members; and Cranford H. Burns, Superintendent), and their agents, servants, employees, successors in office and those in concert with them who shall receive notice of this order, be and they are hereby restrained and enjoined from requiring and permitting segregation of the races in any school under their supervision, from and after such time as may be necessary to make arrangements for admission of children to such schools on a racially non-discriminatory basis with all deliberate speed, as required by the Supreme Court in Brown v. Board of Education of Topeka, 1955, 349 U.S. 294, 75 S.Ct. 753, 99 L. Ed. 1083.

"It is further ordered, adjudged and decreed that said persons be and they are hereby required to make an immediate start in the desegregation of the school of Mobile County, and that a plan be submitted to the District Court by August 1, 1963, which shall include a statement that the maintenance of separate schools for the Negro and white children of Mobile County shall be completely ended with respect to the first grade during the school year commencing September 1963, and with respect to at least one successively higher additional grade each school year thereafter.

"The District Court may modify this order to defer desegregation of rural schools in Mobile County until September 1964, should the District Court after further hearing conclude that special planning of administrative problems for rural schools in the county make it impracticable for such schools to start desegregation in September 1963."

Such jurisdiction as remains in or is delegated to the District Court is reserved for the entry of such other and further orders as may be appropriate or necessary.

Dated this the 11th day of July 1963.

Daniel H. Thomas
District Judge

U. S. DISTRICT COURT
SOU. DIST. ALA.
FILED AND ENTERED THIS THE
11 DAY OF July
19 63 MINUTE ENTRY
NO. 15284
WILLIAM J. O'CONNOR, CLERK
BY
DEPUTY CLERK

B1

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

BIRDIE MAE DAVIS, ET AL.,

Plaintiffs,

VERSUS

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL.,

Defendants

CIVIL ACTION NO. 3003-63.

On oral motion of the Defendants through their Attorneys in the above-styled case for an extension of time of THIRTY (30) DAYS within which to file an answer to the Plaintiffs' complaint and for good cause stated,

IT IS ORDERED by the Court that the Defendants' motion be, and the same hereby is, GRANTED, and the Defendants are hereby allowed THIRTY (30) DAYS within which to answer the Plaintiffs' complaint OR to, and including the 12TH (TWELFTH) DAY OF AUGUST, 1963, within which to file an answer.

Made at Mobile, Alabama, this the 11th day of July A.D., 1963.

DANIEL H. THOMAS
UNITED STATES DISTRICT JUDGE

U.S. DISTRICT COURT
SOU. DIST. ALA.
FILED AND ENTERED THIS THE
11TH DAY OF JULY, 1963.
MINUTE ENTRY NO. 13293
WILLIAM A. O'CONNOR, CLERK,
BY: John V. O'Brien,
Chief Deputy Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 20657

BIRDIE MAE DAVIS, et al.,

Appellants,

VS.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, et al.,

Appellees

ON MOTION FOR INJUNCTION PENDING APPEAL AND FOR OTHER ORDERS.

July 18, 1963

ON PETITION FOR REHEARING

Before BROWN, WISDOM and BELL, Circuit Judges.

PER CURIAM:

This matter is before the Court on the petitioners' application for a rehearing.

July 9, 1963, this Court by mandate directed the District Court to enter an injunction and order requiring the Board of Commissioners of Mobile County to submit to the District Court by August 1, 1963, a step-ladder plan for desegregating the public schools in Mobile, starting with the first grade in September 1963. Three days later, another panel of the Court decided Armstrong v. Board of Education of the City of Birmingham, No. 20595. In that case the Court declined to issue an injunction pending appeal which would go so far as to provide "when and how the complete desegregation of the public schools may be accomplished." The Court's mandate requires the Birmingham School Board to submit by August 19, 1963, a plan for an immediate start in desegregation by applying the Alabama Pupil Placement Law to all school grades.

At this initial stage in the travail of desegregating the public schools in Alabama, the School Boards of Mobile and Birmingham face substantially the same social, legal, and administrative difficulties. We express no opinion of the merits of uniformity in school desegregation as against a school

Board's tailoring a plan and a trial judge's shaping a decree, to fit a particular school system. But we have reached the conclusion that at this early point in the legal proceedings, at a time when no school board in Alabama has formulated any plan for desegregation, there should not be one law for Birmingham and another for Mobile. We have decided therefore to conform the Mobile order to the Birmingham order.

Accordingly, the Court amends the judgment and order of July 9, 1963, issued as the mandate, by deleting the following paragraph:

> "It is further ordered, adjudged and decreed that said persons be and they are hereby required to make an immediate start in the desegregation of the school of Mobile County, and that a plan be submitted to the District Court by August 1, 1963, which shall include a statement that the maintenance of separate schools for the Negro and white children of Mobile County shall be completely ended with respect to the first grade during the school year commencing September 1963, and with respect to at least one successively higher additional grade each school year thereafter."

and, in lieu thereof, directs the District Court for the Southern District of Alabama to enter the following paragraph as its judgment and order:

> "It is further ordered, adjudged and decreed that said persons be and they are hereby required to submit to this Court not later than August 19, 1963, a plan under which the said defendants propose to make an immediate start in the desegregation of the schools of Mobile County, Alabama, which plan shall effectively provide for the carrying into effect not later than the beginning of the school year commencing September 1963 and thereafter of the Alabama Pupil Placement Law as to all school grades without racial discrimination, including 'the admission of new pupils entering the first grade, or coming into the County for the first time, on a non-racial basis,' Augustus v. Board of Public Instruction, 5 Cir. 1962, 306 F. 2d 862, 869 (that opinion describes such a plan which has been approved and is operating in Pensacola, Florida)."

As in the Birmingham decision, the order contemplates a full hearing before the District Court. The District Court will therefore go forward with the trial already fixed for November 14, 1963.

Except to the extent expressly granted herein, the petitioners' application for a rehearing is denied.

The Clerk is directed to issue the mandate, as amended, forthwith.

BELL, Circuit Judge, concurring in part and dissenting in part:

The modification by the majority of their prior order in this case compounds error. Of course, I agree to the modification to the extent that it may alleviate disruption of the educational process in Mobile during the 1963-1964 school term.

My understanding of this latest order is not altogether clear. It appears to simply require activation, under some plan yet to be worked out, of the Alabama School Placement Law which was adopted by the Legislature of that State in 1957, and which was approved as constitutional on its face in Shuttlesworth v. Birmingham Board of Education, N. D. Ala., 1958, 162 F. Supp. 372, affirmed 358 U. S. 101, 79 S.Ct. 221, 3 L.Ed.2d. 145. It is not likely that any appreciable amount of desegregation will take place under that law at this late date. The protective measures assured by Judge Lynne in the Armstrong case of a hearing on complaints if and where the plan or law is administered on the basis of race on five days notice is not present in Mobile. It is an inherently complicated law providing many factors which may be considered in making pupil assignments. We have only recently eliminated two of them in the Atlanta school case where we said that the use of scholastic standards and personality interviews as a basis in transfer and assignment were illegal per se when applied only to Negroes. Calhoun v. Latimer, No. 20,273, 5 Cir., 1963, _____F. 2d _____. Others were eliminated or limited when that case was in the District Court. Calhoun v. Board of Education, N.D. Ga., 188 F.Supp. 401. Working out a meaningful plan will not be easy, and will require more than the cursory and perfunctory treatment the case has received here.

Moreover, what was done in Birmingham may or may not be relevant to Mobile. The case there had been pending in the District Court some three years. The District Court conducted a hearing and had certain representations from the school board as to how the Pupil Placement Law would be administered. Here no party has ever mentioned using this law. The District Court has never considered it.

This case is set for trial on the merits in November. A pending motion to dismiss is set at the same time. The District Court has ordered the school board to propose at that time a plan for desegregation of the school system beginning in September 1964 within the teachings of the Supreme Court decisions on that subject.

It has been the position of appellants that their ultimate right to a desegregated school system is cast in doubt by the pending motion to dismiss, and the fact that the case is set for trial on the merits even though the school system is now segregated. One of the real thrusts of the appeal is their contention that they cannot be certain that desegregation will become a reality in the school term commencing in September 1964 because of this posture of the case. An order of the type originally entered but making desegregation effective with the beginning of school in September, 1964, and in at least two grades, should serve to dispel this doubt and the record warrants such an order. It warrants nothing more. The school board would have the opportunity in the interim of formulating a desegregation plan, subject to court approval, and making ready for the good faith adaptation of the plan.

The modification has been neither sought nor considered and will come as a great surprise to all. It will in all probability be ineffective. I do not understand the inordinate hurry in this case. It has only been pending three and one half months. It has been to this Court twice in that short time.

Probably no party will consider the relief granted or denied to be a victory, but what has been done is at the expense of the judicial process. A Court of Appeals should not sit as a District Court in chancery to mold and enter an equitable decree affecting an entire school system in a metropolitan community without hearing from the parties on the nature of the decree, and without facts before it to serve as a basis for the decree. The All-Writs Statute, 26 USCA, Sec. 1651, does not authorize this. It must contemplate rules of procedure, notice, record facts, and an opportunity to be heard, all after time for consideration by the District Court. It applies only in cases of emergency proportions. To state this belief is to at once demonstrate that I cannot join in the procedure here. Therefore, I must dissent, except as otherwise stated, with the admonition that more constitutional rights will be lost than gained in the long run by departure from procedures which have stood the test of time, and which are a part of due process of law as we have heretofore known it. In fact, more may be eventually lost in this very case.

While this appeal must have been considered as presenting something in the nature of a judicial emergency in the beginning; otherwise it would not have been twice advanced over the many other cases pending in this court, it is plain to me that it now has no emergency proportions. I would remand it to the District Court for action on the basis of reasoned and informed discretion in the light of necessary facts and argument, consistent with the law in the premises and the guidelines which I have set out regarding September 1964.

D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

BIRDIE MAE DAVIS, et al.	)	
Plaintiffs,	)	CIVIL ACTION
vs.	)	NO. 3003-63
BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, et al.	)	ORDER AMENDING JUDGMENT AND ORDER ENTERED JULY 11, 1963
Defendants.	)	

In keeping with the mandate of the United States Court of Appeals for the Fifth Circuit, issued July 18, 1963, amending its judgment and order of July 9, 1963, it is

ORDERED, ADJUDGED AND DECREED by this court that the judgment and order of this court entered July 11, 1963, be and it hereby is amended by deleting the following paragraph:

> "It is further ordered, adjudged and decreed that said persons be and they are hereby required to make an immediate start in the desegregation of the school of Mobile County, and that a plan be submitted to the District Court by August 1, 1963, which shall include a statement that the maintenance of separate schools for the Negro and white children of Mobile County shall be completely ended with respect to the first grade during the school year commencing September 1963, and with respect to at least one successively higher additional grade each school year thereafter."

and in lieu thereof the following paragraph is entered as the judgment and order of this court:

"It is further ordered, adjudged and decreed that said persons be and they are hereby required to submit to this Court not later than August 19, 1963, a plan under which the said defendants propose to make an immediate start in the desegregation of the schools of Mobile County, Alabama, which plan shall effectively provide for the carrying into effect not later than the beginning of the school year commencing September 1963 and thereafter of the Alabama Pupil Placement Law as to all school grades without racial discrimination, including 'the admission of new pupils entering the first grade, or coming into the County for the first time, on a nonracial basis,' Augustus v. Board of Public Instruction, 5 Cir. 1962, 306 F.2d 862, 869 (that opinion

describes such a plan which has been approved and is operating in Pensacola, Florida)."

Dated this the 26th day of July 1963.

Daniel H. Thomas
District Judge

U. S. DIST. COURT
SOU. DIST. ALA.
FILED AND ENTERED THIS THE
26 DAY OF July
1963, MINUTE ENTRY
NO. 15391
WILLIAM A. SCOTT, JR. CLERK
BY Mary O'Brien
DEPUTY CLERK

E

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

BIRDIE MAE DAVIS, ET AL,

Plaintiff,

VERSUS

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL,

Defendants

CIVIL ACTION NO. 3003-63.

ORDER

This cause coming on to be heard on motion of defendants to defer segregation of rural schools in Mobile County until September, 1964, and for designation by the Court of those schools which should be included within the group as to which desegregation should be deferred, if a deferment be ordered; and the Court having considered the affidavits of Dr. Cranford H. Burns and Dr. C. L. Scarborough, filed in support of Defendants' motion aforesaid; and having found that the facts set out therein were true; and it appearing to the Court that special planning of administrative problems for the rural schools in the county makes it impracticable for such schools to start desegregation in September 1963; and it having been stipulated in open Court by Counsel for the Plaintiffs and the Defendants that there was no objection to deferring the desegregation of rural schools until September, 1964; the only issue remaining being a determination by the Court as to what constituted rural schools within the intendment of the mandate of the Court of Appeals and the decree of this Court pursuant thereto; and it appearing to the Court that for many years the Defendant Board, for administrative purposes, had divided its school system into a city division, being those schools within the city limits of the City of Mobile, and into a county division, being those schools outside the city limits of Mobile; and it further appearing to the Court that all those schools in the county division were located in rural areas or served in considerable part the rural sections of Mobile County by the use of publicly owned and operated

school busses; and it appearing to the Court that all schools in the county division fall within the intendment of the term "rural schools"; it is now

ORDERED, ADJUDGED and DECREED that:

1. The desegregation of rural schools in Mobile County be, and it hereby is, deferred until September, 1964.

2. All schools outside the city limits of the City of Mobile are designated as rural schools for the purposes of this order.

Done this 12th day of August, 1963.

Daniel H. Thomas
UNITED STATES DISTRICT JUDGE

U.S.DISTRICT COURT
SOU.DIST.ALA.
FILED AND ENTERED THIS THE
12TH DAY OF AUGUST, 1963,
MINUTE ENTRY NO. 15177
WILLIAM J. O'CONNOR, CLERK,
BY:
John V. O'Brien,
Chief Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

BIRDIE MAE DAVIS, ET AL, Plaintiffs	)	CIVIL ACTION
vs.	)	NO. 3003-63
BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL, Defendants	)	

PLAN SUBMITTED BY THE BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY PURSUANT TO ORDER DATED JULY 11, 1963 AS AMENDED JULY 26, 1963

This plan for the beginning of desegregation of the schools of Mobile County is submitted pursuant to the order of the court entered July 11, 1963 as amended July 26, 1963. Said order contains a preliminary injunction requiring the beginning of desegregation by order of the United States Court of Appeals for the Fifth Circuit pending trial of the case and final decree.

The plan is presented after full consideration by the Board and in the light of the following facts, among others:

A. The Board is in the midst of an accelerated building program designed to remove the necessity of half day sessions and provide adequate housing for more than 75,000 pupils of grades 1-12 and to cope with a continuing annual pupil load increase of approximately 3,000 pupils.

B. The residential pattern is continually being reshaped, causing major changes in neighborhood patterns. These patterns are being further altered by the construction of new thoroughfares I-65 and I-10, through the community, displacing between 1200 and 2000 residences; and

C. These changes have brought about the transfer of students within the system, the admission of new students, and the withdrawal of old students, and have created a major problem for the Mobile School System both within the central office of the Superintendent's staff and at the offices of the respective principals of the 89 local schools; and

D. The Board considers that any general or arbitrary re-assignment of pupils presently in attendance at the 89 existing schools, according to any rigid rule of proximity to school or solely by request on the part of the parents of pupils, would be impractical and a disservice to the system, to the local schools, and to the pupils being transferred; such transfers would tend to overload some schools and leave other facilities in less than full use and at the same time result in an unbalanced teacher-pupil ratio throughout the system; and

E. The estimated enrollments for September, 1963 were developed last February and building and classroom capacity has been adjusted thereto; school supplies, textbooks, and other materials and equipment have been allocated accordingly; schools have been staffed and teachers assigned on the same estimated enrollments; and

F. Portable classrooms, half day sessions, makeshift rooms, and other emergency measures have been utilized as means of coping with the current pupil overload in the Mobile Public Schools, toward the end of providing seating space for the 75,000 pupils of 1962-63 and an estimated additional 3,000 pupils for September of 1963-64. These facts lead to the conclusion that great caution in continuous, system-wide study of facilities available, as well as other factors relating to educational policies governing admissions, transfers, and placement of pupils as are set forth in this document; is vitally essential to orderly procedures; and

G. The problems in connection with any desegregation of the schools outside the corporate limits of the City of Mobile are substantially different from the problems involved for desegregation within the City of Mobile and this plan is confined in its first year of operation to schools within the corporate limits of Mobile.

H. The number of pupils both white and negro in the first grade of schools in the City of Mobile for the year beginning in September 1963 will be approximately 8025 and the number in the 12th grade in the city schools will be 3836.

1. The school year 1963-64 begins on September 4, 1963.

J. In the judgment of the Board it is not practicable, on account of the short space of time remaining, to consider individual applications in behalf of negro pupils for assignment or transfer to schools which have been attended only by pupils of the white race except applications pertaining to one grade only, for the school year commencing September 4, 1963; and

It is the judgment of the School Board that it is for the best interests of the pupils of all grades and the orderly and efficient operation of the Mobile School system that the 12th grade be selected as the grade for the processing of such transfers for the school year 1963-64 and that transfers and assignments pertaining to any other grade cannot as a practical matter be granted for the term commencing in September, 1963.

The Board, therefore, proposes the following plan, pursuant to the said order of the Court:

(1) Assignments: All existing school assignments shall continue without change except when transfers are authorized by the Assistant Superintendent in Charge of Pupil Personnel under the provisions of this plan. Pupils entering the first grade, when the plan shall have become applicable thereto, and pupils otherwise entering the school system for the first time, when the plan shall have become applicable to the grade entered, shall be assigned without regard to race, as is provided hereinafter.

(2) Transfers:

(A) Parents or guardians of pupils in grades to which this plan shall have become applicable, wishing school assignment for the pupils other than as previously assigned or as pre-registered, may make application to that end between April 1 and April 15 of each year for transfer for the next succeeding school year. After 1963, such period shall replace the normal July 31st cut-off date for transfer applications; of former years.

(B) Designation of Assistant Superintendent: In the assignment, transfer or continuance of pupils to specific schools, subject to the supervision and review by the Superintendent and Board, the Assistant Superintendent in charge of Pupil Personnel shall be charged with the responsibility for and the assignment of pupil admission by transfer and by original enrollment.

(C) Transfer Requests: Applications for transfer or initial assignment shall be in writing on forms prescribed and supplied by the Board. The proper forms will be furnished to parents of pupils on request. Separate Applications must be filed for each pupil for whom an assignment or transfer is requested.

(D). Pupil Placement Act Criteria Used: For the grade or grades as to which this plan is effective, race or color of the pupil shall not be a factor in assignment or the granting of transfer, but the following criteria shall be considered in making the assignment or granting the requested transfer, along with other relevant factors: (a) available room at the school to which transfer or assignment is requested; (b) The availability of transportation facilities; (c) suitability of established curricula for particular pupils; (d) the choice and interests of the pupil; (e) the request or consent of parents or guardians and the reasons assigned therefor; (f) the effect of the admission of new pupils upon established or proposed academic programs; (g) the adequacy of the pupil's academic preparation for admission to a particular school and curriculum; (h) the scholastic aptitude and relative intelligence, or mental energy or ability of the pupil; (i) the psychological qualification of the pupil for the type of teaching and associations involved; (j) the effect of admission of the pupil upon the academic progress of other students in a particular school or facility thereof; (k) the

effect of admission upon prevailing academic standards at a particular school; (l) the possibility or threat of friction or disorder among pupils or others; (m) the psychological effect upon the pupils in attendance at a particular school; (n) the possibility of breaches of the peace or ill will or economic retaliation within the community; (o) the home environment of the pupil; (p) the maintenance or severance of established social and psychological relationships with other pupils and with teachers, (q) the morals, conduct, health and personal standards of the pupil.

(E) Tests and Interviews: The Assistant Superintendent in Charge of Pupil Personnel may require interviews with the parents or guardian and the pupil, with the parents or guardian, or with other persons. He may conduct or authorize such examinations or tests and other investigations as he deems appropriate. In the absence of excuses satisfactory to the Pupil Personnel Office, failure to appear for any requested examination, test, or interview by the pupil or parents or guardian, will be deemed a withdrawal of the application.

(F) Notice of Action Taken: Notice of the action taken by the Assistant Superintendent in Charge of Pupil Personnel on each application will be made on or before June 15. For the school year 1963-64 the notice of action taken by the Assistant Superintendent will be made on or before September 3. Such action shall be final, unless a Board hearing is requested in writing within ten days from the date when the notice of action taken on the transfer request is mailed.

(G) Review: If a hearing is requested by the parents or guardian or the Board feels a need for a hearing, such a hearing shall allow for a minimum of ten days notice, but will be held within twenty days. Failure of parents or guardians to appear, with the pupil, at the hearing will be deemed a withdrawal of the application.

Hearings may be conducted by the Board as a whole, or the Board may designate not less than three Board members to conduct the hearing. In either case, the majority decision of the Board or the committee of the Board will be deemed a final decision. The Board may designate a Board member or other competent representative to conduct such a hearing, take testimony, and report evidence with his recommendation to the Board within fifteen days following the hearing. The Board's decision after a hearing, report of evidence, and recommendation will be deemed final. The Board shall be authorized to investigate objections or problems relating to the decision at hand, including an examination of the pupil involved, or the Board may authorize its administrative staff or other competent person to perform this investigation for them. If the Board determines that a pupil is physically or mentally incapacitated to benefit from further normal schooling, the Board may assign the pupil to an exceptional class or to some available special school, or terminate the enrollment of said pupil.

(3) Initial Assignments: When this plan shall have become applicable to the first grade, pupils registering for the first grade may apply for attendance at the school in the district of their residence or the nearest school formerly attended exclusively by their race, at their option.

Pupils entering the Mobile County school system for the first time, in grades to which the plan has become applicable, may apply for attendance at the school in the district of their residence, or the nearest school formerly attended exclusively by their race, at their option.

Upon the submission of this plan, schools shall no longer be designated by race.

(4) Applicability of Plan: This plan shall have application in the school year 1963-64 to the 12th grade, in the City of Mobile schools only. In the school year 1964-65 it shall have application to the 11th and 12th grades in all schools of Mobile County.

It shall have application to grades already included and to one additional lower grade each school year thereafter until all 12 grades are affected.

(5) Special Provisions for 1963-64: The normal July 31 cut-off date for making applications for transfer for the 1963-64 school term shall be observed. For 12th grade pupils in the City of Mobile schools requesting transfer on or before July 31, the transfer provisions of this plan shall apply and race or color shall not be considered as a factor in acting upon such application. Public notice of the deadline was given by publication in a daily newspaper of general circulation in Mobile County one week prior to the closing of the period for receiving transfer applications, as a conscious reminder to the parents and guardians.

BOARD OF SCHOOL COMMISSIONERS OF
MOBILE COUNTY

_____
President

_____
Member

_____
Member

_____
Member

_____
Member

(Original signed by all Board members)

6

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA.

BIRDIE MAE DAVIS, ET AL., Plaintiffs,	)	
vs.	)	CIVIL ACTION NO. 3003-63
BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL., Defendants.	)	

This cause came on to be heard in open court on this day on Plaintiffs' Objections to Defendants' Plan of Desegregation filed August 19, 1963.

Arguments were heard.

Thereupon in open court on this day the Court took under submission the foregoing objections.

Dated at Mobile, Alabama, this the 21 day of August, 1963.

DANIEL H. THOMAS
UNITED STATES DISTRICT JUDGE.

1

U. S. DISTRICT COURT
SOU. DIST. ALA.
FILED AND ENTERED THIS THE
21 DAY OF AUGUST, 1963.
MINUTE BOOK NO. 15192
WILLIAM J. O'CONNOR, CLERK,
BY - J. M. O'Brien
DEPUTY CLERK.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

BIRDIE MAE DAVIS, ET AL., Plaintiffs, vs. BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL., Defendants.	)	CIVIL ACTION NO. 3003-63 ORDER APPROVING PLAN AS MODIFIED

This cause coming on to be considered by the Court pursuant to notice, with counsel for the respective parties being present and heard, on a proposed plan as heretofore filed by the Board of School Commissioners of Mobile County, Alabama, and objections to particulars thereto filed by plaintiffs, it is, upon consideration, hereby

ORDERED:

1. The proposed plan as submitted by the Board of School Commissioners of Mobile County, Alabama, and filed herein on August 19, 1963, pursuant to previous order of this Court, be and it hereby is approved with the following amendments and modifications:

(1) The so-called "cut-off date" for the 1963-64 school term, referred to in paragraph (5) of the Plan and at other places therein, shall be changed from July 31, 1963, to on or before August 28, 1963, for 12th grade pupils.

(2) The defendants, prior to the beginning of the 1963-64 term of school on September 4, 1963, shall process all applications for transfer heretofore received, and all such applications for transfer of 12th grade pupils that may be received not later than said extended date, August 28, 1963.

This Court retains jurisdiction for the purpose of making and entering such further orders as may be necessary to accomplish the essential purposes of the Plan as herein modified and approved.

DONE AND ORDERED at Mobile, Alabama, this the 23rd day of August 1963.

Daniel H. Thomas
District Judge